

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



TITLE 13: DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (department) proposes to amend Sections 125.00 and 125.02; adopt Section 125.19; and repeal Section 127.06 in Article 2.55, Chapter 1, Division 1, Title 13 of the California Code of Regulations, related to the California Ignition Interlock Device (IID) Program.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 p.m., **February 12, 2018**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

AUTHORITY AND REFERENCE

The department proposes to adopt these regulations under the authority granted by Vehicle Code section 1651, 13386, and 23575, in order to implement, interpret, or make specific Vehicle Code sections 13353.3, 13386, and 23575.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The department is responsible for administering the IID Program. An IID is a device that is connected to a vehicle's ignition that requires the driver to provide a breath sample before the engine will start. If the IID detects alcohol in the driver's breath, the engine will not start.

Current law requires the department to suspend the driver's license of a person who is convicted of certain violations involving driving under the influence of drugs and/or alcohol. In accordance with Vehicle Code sections 13352(a)(3) through (a)(7) and 13353.3, upon conviction, the driver will serve a cursory term of suspension and, if the driver provides satisfactory proof that he or she is enrolled in a specified driving-under-the-influence program, provides proof of financial responsibility and IID installation, and pays specified restriction and reinstatement fees, the driver can apply to the department to have an IID restriction. Once an IID is installed, the driver is required to have the device inspected and calibrated by a certified IID installer at least once every 60 days.

Senate Bill 1046 (Chapter 783; Statutes of 2016) amended Vehicle Code section 23575 to require a driver whose vehicle is equipped with an IID to complete retests at randomly variable intervals.

Vehicle Code section 23575(p) requires the department to adopt regulations specifying the intervals between random retests. In order to determine acceptable interval ranges, the department reviewed the processes of other states with randomized interval testing and consulted with IID manufacturers to determine the interval testing capabilities of devices currently in operation. The department found that all IID manufacturers had similar intervals for their devices. Specifically, the manufacturers that the department consulted with reported that their devices could require a first test within five to fifteen minutes after the initial test that allows the engine to start and at random intervals between ten to forty-five minutes for subsequent tests. These intervals were also found to be consistent with those used by other states. In the end, the department determined that the first retest should occur between five and fifteen minutes after the initial vehicle start and subsequent tests should occur at randomized intervals between fifteen and forty-five minutes for subsequent retests. Upon approval of this regulatory action, manufacturers will program devices that are ready for use in California to require random interval testing. For drivers with devices already installed in their vehicles, their IIDs will be updated with the random interval requirements at the time of their next IID inspection and calibration service.

In 2010, with passage of Assembly Bill 91 (Chapter 217; Statutes of 2009), the department began a pilot program in the counties of Alameda, Los Angeles, Sacramento, and Tulare through December 31, 2018. Under the pilot program, all persons convicted of driving under the influence of drugs/alcohol, except for those who qualify for an exemption, are required to install a certified IID on each vehicle he or she owns or operates. AB 91 also adopted Vehicle Code section 13386(g) requiring IID manufacturers to provide an annual report to the department documenting the number of false positives and the time it takes to reset the device. The information contained in these reports were used by the department to evaluate the continued certification of a device.

SB 1046 repealed Vehicle Code section 13386(g), therefore, the department is repealing the associated rule that requires manufacturers to submit the annual report to the department.

PROBLEMS THIS DEPARTMENT INTENDS TO ADDRESS AND BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

Until passage of SB 1046, California did not require randomized retests of drivers who have IIDs installed in their vehicles. The driver would take the first test, the engine would start and there would be no additional tests until he or she started the vehicle the next time.

Passage of SB 1046 required the department to determine acceptable intervals for random retests. This action will benefit California residents and drivers by ensuring that IID manufacturers certify that their devices that are being used in California will conduct random tests for the duration of the drive. Random tests will ensure a drivers continued sobriety, which will create safer roadways in the state.

CONSISTENCY AND COMPATIBILITY WITH STATE REGULATIONS

The department conducted an analysis of other state regulations and determined that the regulations adopted in Article 2.55 of Title 13 are the only regulations related to the IID Program, therefore, these regulations are neither inconsistent nor incompatible with other state regulations.

COMPARABLE FEDERAL STATUTES OR REGULATIONS

The department conducted a review of comparable federal regulations and statutes and has determined that no other regulations address randomized interval testing on IIDs.

DOCUMENTS INCORPORATED BY REFERENCE

The following documents are incorporated by reference:

- Random Retest Compliance Self Certification, form OL 624 (New 5/2017)

The form OL 624 will not be published in the California Code of Regulations because it would be impractical and cumbersome to do so; however, the document is readily available to interested parties by contacting the department representative identified below.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- *Cost or Savings to Any State Agency:* None.
- *Other Non-Discretionary Cost or Savings to Local Agencies:* None.
- *Costs or Savings in Federal Funding to the State:* None.
- *Effects on Housing Costs:* None.
- *Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.:* None.
- *Cost Impact on Representative Private Persons or Businesses:* The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Drivers who have devices installed in their vehicles do pay fees for the maintenance of the devices, however, those costs are set by the installers and are not a subject of this proposed action.
- *Small Business Impact:* This regulation may affect small business.
- *Local Agency/School District Mandate:* The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

- *Significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states:* This action is unlikely to have any significant statewide adverse economic impact on businesses. IID manufacturers are currently able to program devices to require random interval testing, therefore, the department does not anticipate the requirements in this action to have a significant adverse impact.

RESULTS OF THE ECONOMIC IMPACT STATEMENT

The department has made the following determinations when assessing the economic impact associated with this proposed regulation:

The department has determined that this action will not impact 1) the creation or elimination of jobs within the State of California, 2) the creation or elimination of existing businesses within the State of California, or 3) the expansion of businesses currently doing business within the State of California.

This action will benefit the health and welfare of California residents and the motoring public, in general, by ensuring the continued sobriety of drivers with IIDs in their vehicles. Drivers will be retested every fifteen to forty-five minutes during their drive. This action is not likely to have a significant impact on worker safety or the state's environment.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Randi Calkins, Regulations Analyst
Department of Motor Vehicles
Legal Affairs Division
PO Box 932382, MS C-244
Sacramento, CA 94232-3820

Any inquiries or comments concerning the proposed rulemaking action requiring more immediate response may use:

Telephone: (916) 657-8898
Facsimile: (916) 657-6243
E-Mail: LADRegulations@dmv.ca.gov

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Shelly Johnson Marker, Chief of Staff
Department of Motor Vehicles
Telephone: (916) 657-6469

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an Initial Statement of Reasons for the proposed regulatory action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strikeout to indicate deletions from the California Code of Regulations.

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and Express Terms) may be accessed at <http://www.dmv.ca.gov/portal/dmv/detail/about/lad/regactions>.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.